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Attorneys for Federal Defendants

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

THE ASSINIBOINE AND SIOUX
TRIBES OF THE FORT PECK INDIAN
RESERVATION,

Plaintiffs,

v.

THE U.S. DEPARTMENT OF THE
INTERIOR, *et al.*,

Defendants,

and

TRANSCANADA KEYSTONE
PIPELINE, LP, *et al.*,

Defendant-Intervenors.

CV 20-44-BMM-JTJ

**DEFENDANTS' MOTION TO
DISMISS CLAIMS TEN AND
ELEVEN IN PLAINTIFFS' FIRST
AMENDED AND
SUPPLEMENTED COMPLAINT**

Defendants U.S. Department of the Interior, *et al.*, hereby move to dismiss Claims Ten and Eleven in Plaintiffs' First Amended and Supplemented Claim for Declaratory and Injunctive Relief, ECF No. 57. Claim Ten alleges that Defendants violated section 106 of the NHPA, 54 U.S.C. § 306108, and Claim Eleven alleges that Defendants violated section 110k, 54 U.S.C. § 306113, and section 106 of the NHPA, 54 U.S.C. § 306108. Claim Ten should be dismissed for failure to state a claim and for lack of jurisdiction, and Claim Eleven should be dismissed for failure to state a claim. The grounds for this motion are set forth in the accompanying memorandum in support. Defendants' counsel has consulted with counsel for the parties regarding this motion. Plaintiffs oppose this motion and Defendants TransCanada Keystone Pipeline, LP, *et al.*, do not oppose this motion.

DATED: December 21, 2020

Respectfully submitted,

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/s/ Luther L. Hajek

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CERTIFICATE OF SERVICE

I hereby certify that on December 21, 2020, a copy of the foregoing was served on all counsel of record via the Court's CM/ECF system.

/s/ Luther L. Hajek
LUTHER L. HAJEK
U.S. Department of Justice